INDEX

SUBJECT INDEX

	Page
Petition for Writ of Certiorari	1
Summary Statement of Matter Involved	2
Opinions Below	2
Jurisdiction	3
Statutes Involved	3
Questions Presented	4
Specifications of Error	5
Reasons for Granting the Writ	6
Conclusion	20

APPENDIX INDEX

Statutes and Provisions of Constitution in South Carolina	22
Opinion and Order of District Court	33
Opinion of United States Court of Appeals for Fourth Circuit	37

TABLE OF CASES CITED

Arkansas Valley Co-op Rural Electric Company v. Elkins, 200 Ark. 883; 141 S. W. (2d) 538 — 15, 21, 36

Benjamin v. Housing Authority of Darlington, et al., 198 S. C. 79; 15 S. E. (2d) 737 — 18, 43, 45

Bookhart v. Central Electric Power Coop., 219 S. C. 414; 65 S. E. (2d) 781 — 10, 35, 41

Carolina National Bank v. Spigner, 106 S. C. 185; 90 S. E. 748 — 17

Caughman v. Columbia Y. M. C. A., 212 S. C. 337; 47 S. E. (2d) 788 — 9, 34, 38

Consolidated Electric Co-op v. Panhandle E. Pipe Line Company (Eighth Circuit) 189 Fed. (2d) 777 — 15

Ellerbe v. David, County Treasurer, et al., 193 S. C. 332; 8 S. E. (2d) 518 — 17, 19, 44

Erie Rwy. Co. v. Tompkins, 304 U. S. 64 ____ 4
Flueling v. Goeringer, et al., 240 Mich. 372; 215 N. W. 294, 295 ____ 16
Fordyce v. Woman's Christian Nat'l Lib. Assn., 79 Ark. 550; 96 S. W. 155; 7 LRA NS 485 ____ 16
Lindler v. Columbia Hospital, 98 S. C. 25; 81 S. E. 512 ____ 9, 34, 40
Little v. Newburyport, 210 Mass. 414; 96 N. E. 1082 ____ 8
McNulty v. Owens, 188 S. C. 377; 199 S. E. 425 ____ 18
Parker v. Bates, 216 S. C. 52; 56 S. E. (2d) 723 ____ 17
Peden v. Furman University, 155 S. C. 1; 151 S. E. 907 ____ 9, 34
Rice Hope Plantation v. S. C. Public Service Authority, 216 S. C. 500; 59 S. E. (2d) 132 ____ 13, 43
State v. City of Columbia, 115 S. C. 108; 104 S. E. 337 ____ 18
Thorp v. Lund, 227 Mass. 474, 116 N. E. 946 ____ 8
Vermillion v. Woman's College of Due West, 104 S. C. 195; 88 S. E. 649 ____ 9, 11, 34, 36, 38, 40

STATUTES AND OTHER REFERENCES

Constitution of State of South Carolina, Article 10, Section 1 and Section 4 ____ 3, 31, 32
1942 *Code of Laws of South Carolina*, Section 2578, Sub-Section 61 ____ 3
1952 *Code of Laws of South Carolina*, Chapter 16, Article 2, Section 65-1522, Sub-Sections 44 and 45 ____ 3, 10, 32
1952 *Code of Laws of South Carolina*, Chapter 15, Article 1, Sections 12-1001 to 12-1083 ____ 3, 4, 10, 21-31
Rural Electrical Authority Act (1936) 7 U.S.C.A. 901, et seq. ____ 3, 4, 18, 42
28 U.S.C.A., Section 1254 (1) ____ 3
Section 1 (b) Rule 19 of the *United States Supreme Court* ____ 3
10 *American Jurisprudence, Charity*, pp. 584-586 ____ 8
Report of Committee on Agriculture and Forestry of United States Senates, Report No. 1581, Calendar 1645 to acc. S. 3483, 74th Congress, Second Session ____ 10

In The Supreme Court of the United States

_____ TERM, 1954

NO. _____

BLUE RIDGE RURAL ELECTRICAL COOPERATIVE, INC., *Petitioner*

Versus

JAMES EARL BYRD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Blue Ridge Rural Electrical Cooperative, Inc., respectfully represents that it is aggrieved by the decision of The United States Court of Appeals for the Fourth Circuit in an action at law entitled *No. 6789, James Earl Byrd, Appellant, vs. Blue Ridge Rural Electrical Cooperative, Inc., Appellee,* decided September 2, 1954, and by reason thereof, your Petitioner is entited to a Writ of Certiorari to be directed to The United States Court of Appeals for the Fourth Circuit, in order that the said decision may be reviewed by your Honorable Court.

I

SUMMARY STATEMENT OF MATTER INVOLVED

This action was commenced when James Earl Byrd filed suit in The United States District Court for the Western District of South Carolina against Blue Ridge Rural Electrical Cooperative, Inc., to recover damages for severe personal injuries alleged to have been caused by the negligence and wantonness of the Defendant, its agents, servants and employees, acting within the scope and course of employment. The Defendant filed a motion to dismiss the Complaint upon the ground that "the Complaint fails to state a claim against the Defendant upon which relief can be granted in that Defendant is a non-profit rural electrical cooperative and, as such, is not subject to suit for tort". This motion was granted and the Complaint dismissed by Order of District Judge C. C. Wyche, dated February 18, 1954.

Upon appeal by the Plaintiff, James Earl Byrd, to the Court of Appeals for the Fourth Circuit, that Court, for the reasons stated in its opinion, rendered September 2, 1954, reversed the judgment of the District Court and remanded the case for further proceedings.

It is not disputed that the Blue Ridge Electrical Cooperative, Inc. was organized and operates under the provisions of the Rural Electric Cooperative Act of South Carolina, as set forth in Chapter 15 of Volume I of the Code of Laws of South Carolina, 1952 (Sections 12-1001, et seq.) and the liability in tort of the Defendant would be controlled by the laws and decisions of the State of South Carolina.

OPINIONS BELOW

The Order of the District Court is reported at 118 Fed. Supp. 868. The decision of the Court of Appeals is not yet reported.

JURISDICTION

The opinion of the Court of Appeals was filed on September 2, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. A., Section 1254 (1), and Section 1(b) of Rule 19 of the Supreme Court, together with diversity of citizenship and the jurisdictional amount.

STATUTES INVOLVED

The pertinent provisions of the Constitution of the State of South Carolina (Article 10, Section 1 and Section 4) and the applicable statutes (*1942 Code of Laws for South Carolina*, Section 2578, Sub-section 61; *1952 Code of Laws for South Carolina*, Chapter 16, Article 2, Section 65-1522, Sub-sections 44 & 45), including the *Rural Electric Cooprative Act*, (Chapter 15, Article 1, *1952 Code of Laws for South Carolina*, Sections 12-1001 to 12-1083) are printed in the appendix, infra, pp. 22-33. Also involved is the *Rural Electrical Authority Act* passed by Congress in 1936 (7 U. S. C. A. 901, et seq.).

QUESTIONS PRESENTED

I

Is petitioner a charitable or eleemosynary corporation, exempt from liability in actions ex delicto under the laws of South Carolina?

II

Is petitioner exempt from liability in actions ex delicto pursuant to the provisions of the *Rural Electrical Cooperative Act of South Carolina* (Chapter 15, Volume 1 of the *Code of Laws of South Carolina, 1952*)?

III

Has the Court of Appeals decided an important question of local law with a result in conflict with applicable local decisions and contrary to the intent of the statutory laws of the state, thereby failing to follow the South Carolina laws as declared by the Courts of South Carolina within the requirements of the decision of the United States Supreme Court in *Erie Ruy. v. Tompkins*, 304 U. S. 64?

SPECIFICATIONS OF ERROR

SPECIFICATION NO. 1

(a) The Court of Appeals erred in refusing to affirm the judgment of the District Court that the petitioner is a non-profit Rural Electric Cooperative and, as such, is an eleemosynary corporation exempt from suit for tort under the South Carolina law.

(b) The Court of Appeals erred in failing to hold that the provisions of the Rural Electric Cooperative Act of South Carolina and the organization and operation of the petitioner thereunder places the petitioner within the purview of the decisions of the South Carolina Supreme Court exempting eleemosynary and charitable organizations from tort liability.

(c) The Court of Appeals committed error in failing to hold that petitioner was created a non-profit corporation exempt from liability in actions for tort, by the provisions of the Special Act of the General Assembly of South Carolina under which petitioner was organized and is operating.

SPECIFICATION NO. 2

(a) The Court below erred in failing to hold that the exemption of Rural Electric Cooperatives from all taxes by the South Carolina Legislature was necessarily under the last clause of the provisions of Article X, Section 1 of the State Constitution and tantamount to a legislative declaration of public policy that such Cooperatives are eleemosynary.

(b) The Court below erred in holding that petitioner is essentially a business corporation with the liability of other utilities and in holding at the same time that all of its property could be legally exempted from taxation without exempting similar property of such other utilities similarly used from taxation.

REASONS FOR GRANTING THE WRIT

It is in the public interest that the issue herein, which vitally affects 1,064 Rural Electric Cooperatives throughout the nation, be determined.

The decision of the Court of Appeals in this case is of serious concern, not only to the petitioner herein, but to the 1,063 other Rural Electric Cooperatives which are today supplying electric service to farm families throughout the nation. The Legislative Acts of the forty-eight states, under which the Rural Electric Cooperatives were organized and are operating, are uniform in substance and essentially so in form. All were made to conform to the Rural Electrification Administration Act of the Congress, passed in 1936 (7 U. S. C. A. 901, et seq.). Under all of the Acts, the powers of the Cooperatives are greatly restricted. Their revenues are earmarked and can only be used for declared purposes.

The Rural Electric Cooperatives came into being to carry electric energy to rural residents to whom it otherwise could not be made available, thus to fulfill a great public need which was not being and could not be met by privately owned utilities operating for profit. The Cooperatives were permitted by law to borrow all of the funds required to construct their transmission and distribution systems through the Rural Electrification Administration to be repaid over a long period of years. They were created to supply, at actual cost and without profit, electric energy to rural residents in sparsely settled and remote areas of the country, where some of our most illiterate and backward citizens live and where laborers, share croppers and tenant farmers receive the lowest income of any laborers in the nation, in areas removed from population centers which otherwise could not and would not be served; to promote the welfare and raise the standard of living of such residents and to provide for education in cooperation and for the dissimulation of information concerning the effective use of electric energy and other services made available by them. They were created

to promote the happiness, the well being of mankind in rural America. They are not concerned with profits. They make no profits. They are prohibited by the Federal and State Acts to make a profit. Their prime purpose is to serve, to serve not part, but all of the rural population in America.

That they are carrying out their assigned mission and, that they are carrying it out effectively, is attested by the fact that, whereas in 1935, only 10.9 percent of the farm homes in the nation were supplied with central station electric service, today 90.8 percent of the farm homes are supplied with such service and the construction program is still going forward at a rapid pace. The loans of the cooperative are being amortized satisfactorily and according to schedule. So far, however, they have only operated in an era of prosperity. They have no record of experience during periods of recession or depression. The Congressional Act, above referred to, and the State Legislative Acts, also referred to, do not contemplate that any part of the revenue of the Cooperatives shall be used in the payment of tort claims. The uses which may be made of the revenue are expressly declared and the payment of tort claims is not one of the specified uses to which the revenue may be put.

The action in the case at bar is for damages in the amount of One Hundred, Sixty-four Thousand Dollars ($164,000.00). If such recovery could be had, the petitioner would be destroyed. The loans made it through the Rural Electrification Administration would be placed in great jeopardy.

The statistics will prove that privately owned utilities in this country, operating for profit, will average about one hundred consumers per mile of line maintained and their consumers are mostly substantial users of current. The Cooperatives, on the other hand, will average only about four consumers per mile of line maintained and their consumers are mostly small users of current. Thus, it is obvious that if the Cooperatives are to exist, their operating costs must be kept to a minimum. The State and local units of government forego the collection of taxes from them because they cannot pay the taxes and supply electric services to the rural residents at a rate they can afford

to pay. The reason the privately owned utilities have not served the rural residents, whom the Cooperatives are now serving, is that they could only serve them at great financial loss. The Rural Electrification Administration had made loans as of December 1, 1952 to the Cooperatives totalling approximately $2,157,945,900.00. By reason of this investment, the Administration keeps close supervision over the operation of the Cooperatives to protect the investment of the Federal Government and, based upon the record of achievement to date, it is safe to assert that the Cooperatives can and will repay every penny borrowed, if they are permitted to operate with the fixed expenses provided in the Acts under which they were created. However, if new and unauthorized operating costs are added, the results may be disastrous. It is in the public interest, therefore, that the question herein raised be decided by this Honorable Court.

SPECIFICATION OF ERROR NO. 1

The word "charity", like many other words, has both a lay meaning and a legal meaning. In legal parlance the word charity has a much wider significance than in common speech (10 *American Jurisprudence*, Charity, pp. 584-586). A charity is not confined to mere alms giving or the relief of poverty and distress, but has a wider signification and embraces the improvement and promotion of the happiness of man. *Thorp v. Lund*, 227 Mass. 474, 116 N. E. 946; *Little v. Newburyport*, 210 Mass. 414, 96 N. E. 1032. In 10 *Am. Jur.* p. 587, Section 3, it is stated:

> " . . charity, in a legal sense, is rather a matter of description than of definition. The word 'charitable,' in legal contemplation, is broad enough to include many similar terms. Thus, the term 'eleemosynary' has come in law to be interchangeable with the word 'charitable'. The latter is broader in meaning and scope than other terms."

Also, on page 588, Section 5, we find the following:

"A public charity is one in which there is a benefit to be conferred on the public at large, or some portion thereof, or upon an indefinite class of persons. Even if its benefits are confined to specified classes as decrepit seamen, laborers, farmers, etc., of a particular town, it is well settled that it is a public charity.

"The essential elements of a public charity are that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite unrestricted quality that gives it its public character."

The decisions of the Supreme Court of South Carolina are in complete accord with the foregoing definitions and the law is well settled that a charitable organization or eleemosynary corporation is not liable for actions in tort. The hospitals, the Y. M. C. A. and other like institutions are held to be charitable or eleemosynary and exempt from liability in actions ex delicto on grounds of public policy with the rule of full immunity being consistently applied to such institutions. *Lindler v. Columbia Hospital*, 98 S. C. 25, 81 S. E. 512; *Vermillion v. Woman's College of Due West*, 104 S. C. 197, 88 S. E. 649; *Peden v. Furman University*, 155 S. C. 1, 151 S. E. 907; *Caughman v. Columbia Y. M. C. A.*, 212 S. C. 337, 47, S. E. (2d) 788.

We contend that the petitioner clearly falls within the definition of charity as spelled out in the decisions of the Supreme Court of South Carolina and the rule as to charities has become so well settled in the State that, when an institution is involved of the type above mentioned, its eleemosynary character is not questioned. For illustration, in the case of *Caughman v. Columbia Y. M. C. A.*, supra, decided in 1948, the Court noted that the charitable character of the institution had not been questioned, and, with reference to the Y. M. C. A., said:

"It is a non-profit, character building institution, having for its aim the mental, physical and religious development of boys and men."

The nature and quality of the benefits which flow to the rural public from the operation of the petitioner herein, clearly places

it in the category with hospitals, the Y. M. C. A. and other eleemosynary institutions. It is a non-profit eleemosynary public service corporation, whose property is held solely for a public use. *Bookhart v. Central Electric Power Coop.*, 219 S. C. 414, 65 S. E. 2d 781.

The petitioner was organized and is being operated under the sponsorship of the Federal Government, with the assistance of the State of South Carolina, to carry electric energy, at the lowest possible cost and without profit, to the residents of remote and sparsely settled rural areas to whom such energy could not otherwise be made available, and to provide other opportunities for education and entertainment through the radio and television and otherwise to promote the common good. The members of the petitioner corporation invested no capital in it. The Federal Government furnished all needed funds. The members of the Cooperative simply associated themselves together to receive the funds from the Federal Government by way of loan and to use the funds as directed by law. The State of South Carolina relieved the petitioner of all state regulations affecting utilities and exempted it from the payment of all taxes, charging in lieu of taxes, a fee of only Ten Dollars ($10.00) per one hundred members. (See Chapter 15, *Rural Electric Company Act*, Sections 12-1001 to 12-1083; also, Section 65-1522, Subsection (44), *1952 Code of Laws of South Carolina;* also, *Bookhart v. Central Electric Power Coop.*, supra.

With regard to the declared purpose of the program of rural electrification, in the report of the Committee on Agriculture and Forestry of the United States Senate, Report No. 1581, Calendar No. 1645, to accompany S. 3483, 74th Congress, Second Session, we find the following:

> "If this measure is enacted, we may expect the following benefits to this country:
>
> "1. Orderly progress in rural electrification during the next decade, resulting in an improved standard of rural life.
>
> "2. Increased demands for durable and semi-

durable goods which will contribute to the absorption of idle plant capacity, and the building and operation of new factories, which in turn mean substantial additions to factory pay rolls and industrial earnings.

"3. Increased employment in needed construction for thousands of able Americans who are now seeking employment.

"4. Permanent employment for thousands in the maintenance and operation of these lines.

"The enactment of the rural electrification bill before you will make possible the achievement of these desirable objectives. It is within the power of the Congress to make possible the electrification of rural America within our generation."

Also,

"The concept of public responsibility for agricultural welfare has had broad acceptance in the past few years. There has been increasing realization that farming as a way of life has lost stability and recognition that the lack of balance between urban and rural living standards has contributed to this loss.

"Increasing the extent of rural electrification means increasing the comfort and livability of more farm homes.

"This is a favorable time for undertaking a national effort to provide electric service for additional increments of our farm population. The partial restoration of farm incomes has already stimulated rural buying and spurred urban industry. Farm income has increased approximately 50 percent over 1932, and hundreds of thousands of farmers can now well afford the advantages of electric service."

It must be concluded from the above cited cases that the Supreme Court of South Carolina is firmly committed to the proposition that charitable or eleemosynary corporations, associations and institutions are exempt from liability in actions for tort. The reasons for the rule are clearly and forceably set out by the Court in the case of *Vermillion v. Woman's College of Due West*, supra. In that case, the Court said:

"The exemption of public charities from liability in actions for damages for tort rests not upon the relation of the injured person to the charity, but upon grounds of public policy, which forbids the crippling or destruction of charities which are established for the benefit of the whole public to compensate one or more individual members of the public for injuries, inflicted by the negligence of the corporation itself, or of its superior officers or agents, or of its servants or employees. The principle is that, in organized society, the rights of the individual must in some instances, be subordinated to the public good. It is better for the individual to suffer injury without compensation than for the public to be deprived of the benefit of the charity. The law has always favored and fostered public charities in ways too numerous to mention, because they are most valuable and adjuncts of the state in the promotion of many of the purposes for which the state itself exists. That being so, what difference can it make whether the tort is that of the corporation itself or its superior officers and agents, or that of the servants? Liability for the one would as effectually embarrass or sweep away the charity as the other. It would, therefore, be illogical to admit liability for the one and deny it for the other.

"This rule does not put such charities above the law, for their conduct is subject to the supervision of the court of equity; nor does it deny an injured person a remedy for his wrong. It is merely an exception to the rule of respondeat superior, which is itself based on reasons of public policy. The injured person has his remedy against the actual wrongdoer. It is said, however, that he may be and often is financially irresponsible. But the answer is that the law does not undertake to provide a solvent defendant for every wrong done. There are many cases of wrongful injury not compensated, because the wrongdoer is insolvent."

We respectfully submit that public utilities in South Carolina are not set apart and rendered peculiarly and inevitably liable in actions ex delicto as is indicated in the Opinion of the Court below. Some of the utilities are liable in actions for

tort but some are not. The South Carolina Public Service authority which operates the Santee Cooper generating plant and transmission system, is not liable in tort actions. See *Rice Hope Plantation v. S. C. Public Service Authority*, 216 S. C. 500, 59 S. E. (2d) 132. In this case the Court held that the power "to sue and be sued," as provided for in the Act creating the authority, could not reasonably be construed as authorizing an action ex delicto against it. The Act creating the South Carolina Public Service Authority did not specify that the authority should not be liable in tort nor did the Act under which the Rural Electric Cooperatives were organized so specify. No reference was made to the matter in either Act and none was necessary. The exemption followed as a matter of public policy and to have made either liable in tort, it would have been necessary to have provided for such liability in the Act.

In addition to its exemption from liability in tort actions on the grounds that it is a charitable or eleemosynary corporation, the petitioner herein is exempt from liability in such actions on the further ground that by Special Act of the General Assembly of South Carolina, it is created a non-profit, quasi-public service corporation with such powers and liabilities only as are expressly prescribed in the Act creating it and it is not made liable under the Act for tort.

The Supreme Court of South Carolina has not construed the Special Act of the General Assembly referred to above as it relates to the question here involved. The answer to the question here raised must, therefore, be found by examining the provisions of this Act in the light of the public policy of the state generally, as set forth in the decisions of the Supreme Court, some of which are cited above. Certainly, the Supreme Court of South Carolina has never held that the right of an individual to recover damages for an injury sustained through the negligence of a non-profit corporation, operated for the benefit of the whole public, is paramount to the right of the public to have such corporation exist, without being crippled

or destroyed by the payment of such claim. The Court has held to the contrary. It adheres to the principle that, in organized society, the rights of the individual must in some instances be subordinated to the public good.

When the law requires a corporation like the petitioner herein, to operate without profit, the operation admits of no business gains from which judgments in actions ex delicto can be satisfied and certainly its revenue, collected for other specified purposes, cannot be diverted to such use. The Special Legislative Act of the General Assembly of South Carolina, which is here involved, provides that petitioner's revenues shall be used for the following and for no other purposes (Section 12-1037, 1952 Code of Laws of South Carolina, Appendix pp. 28):

> (1) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;
>
> (2) To pay interest and principal obligations of the cooperative coming due in such fiscal year;
>
> (3) To finance or to provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;
>
> (4) To provide a reasonable reserve for working capital;
>
> (5) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and
>
> (6) To provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

Under the foregoing provisions of the Act, the payment of tort claims is not specified as one of the uses to which the revenues of the petitioner may be put. Not being included,

such use is necessarily excluded. The funds, held by petitioner under the provisions of the Act, are in the nature of trust funds. The Federal Government holds a mortgage over all the assets of petitioner. The petitioner has no equity in its property, because the depreciation on its property equals the amount of the amortization payments on its mortgage. It follows, therefore, that under the provisions of the aforesaid act, the petitioner is not liable in actions ex delicto.

It was pointed out by the Court below in a footnote to the Opinion that decisions as to the liability of electric cooperatives for tort under varying local conditions are conflicting, citing *Arkansas Valley Co-op Rural Electric Company v. Elkins* 200 Ark. 883, 141 S. W. (2d) 538 and *Consolidated Electric Co-op v. Panhandle E. Pipe Line Company* (Eighth Circuit) 189 Fed. (2d) 777. We think the Opinion in the Consolidated Electrict Co-op case which the Court below asserted to be contrary to the position of petitioner, can be readily distinguished as it had been previously determined that the Missouri Statute, pursuant to which Consolidated Electric purported to be organized did not authorize electric power cooperatives. Also, the Court held that Consolidated Electric Cooperative was in truth and fact a continuation of its predecessor corporation. We submit that the Arkansas case is squarely in point and sustains the position of petitioner. In the *Arkansas Valley* case, an Act of the General Assembly of the State of Arkansas, similar to the South Carolina Act and made conformable to the Federal Rural Electrification Act as is the South Carolina Act, was involved. The Arkansas Supreme Court held that, inasmuch as the Cooperative was a non-profit corporation whose funds were required by the Act to be used for prescribed purposes and the payment of tort claims was not one of the purposes specified, it was not liable in actions ex delicto. The Court held as follows:

> "Appellant corporation in the instant case was created, as indicated, under the special provisions applying to non-profit sharing corporations for the benefit of its members only. No provision is made for the

creation of a fund out of which to respond for the tort of one of its members or employees, and unless there is statutory liability, in tort actions, appellant corporation cannot be held liable. True it may be sued to enforce contracts into which it might enter, but it cannot be made to respond in tort in the absence of statutory provision therefor * * *

"We think the funds created by non-profit sharing corporations, such as in the instant case, are in the nature of trust funds. * * *

"We have applied this same principle of law to charitable corporations which were non-profit sharing. The leading case in which this court denied liability of such corporations in tort actions is that of *Fordyce v. Woman's Christian Nat'l. Lib. Ass'n.*, 79 Ark. 550, 96 S. W. 155, 7 LRA NS 485.

"In the well considered case of *Flueling v. Goeringer, et al*, 240 Mich. 372, 215 N. W. 294, 295, decided by the Supreme Court of Michigan, October 3, 1927, we think the principle of law there announced to be sound and apply here. It was there said:

'. . . The law permitting corporations not for pecuniary profit admits of no business gains from which judgments in actions like this can be satisfied, and the company cannot turn the dues of the members for such a purpose, for the dues are devoted to a service from which the company derives no pecuniary gain'."

The petitioner is a non-profit Cooperative performing a laudable purpose and we submit that it is truly eleemosynary and the Court below should have so concluded. The public and the State of South Carolina are vitally interested and the reasons set forth above and in the cases cited firmly establish that exemption from liability for tort applies to petitioner.

SPECIFICATION OF ERROR NO. 2

The General Assembly of South Carolina clearly evidenced an intent to create the Rural Electric Cooperatives of the State to be charitable or eleemosynary corporations by exempting them from the payment of all property taxes. By creating the Cooperatives as eleemosynary corporations, the

General Assembly had the power to exempt them from the payment of property taxes under the last clause of Article X., Section 1 of the South Carolina Constitution (See Appendix p. 81). If the Cooperatives were simply business corporations operating for purposes like any privately owned utility and with the same obligations and liabilities as was held by the Court of Appeals in this instance, they could not be legally exempted from the payment of property taxes unless the same exemption were granted to the privately owned utilities on property used by them in supplying electric service to rural residents. *Ellerbe v. David, County Treasurer, et al*, 193 S. C. 332, 8 S. E. (2d) 518; *Carolina National Bank v. Spigner*, 106 S. C. 185, 90 S. E. 748. In such case, the privileged treatment of the Cooperatives would violate the Uniform and Equal Provisions Clause of Article X., Section 1 of the South Carolina Constitution. The privately owned utilities were not granted the exemption which was granted the Cooperatives; thus, the exemption granted the Cooperatives is not constitutional unless they are charitable corporations within the meaning of the said Article X, Section 1 of the Constitution and every presumption will be made in favor of the constitutionality of the exemption. *Parker v. Bates*, 216 S. C. 52, 56 S. E. (2d) 723.

The South Carolina Constitution divides the property in the state, real, personal and possessory, into three general classes for tax purposes:

(1) Property which is exempt from taxation;
(2) Property which may be exempted from taxation by law; and,
(3) All of the other property which is taxed at all must be assessed and taxed uniformly and equally.

Number (1) is covered by Article X., Section 4 of the Constitution. Numbers (2) and (3) are covered by Article X., Section 1 of the Constitution.

It is clear that the General Assembly intended that the property of Rural Electric Cooperatives should come under

Number (2) because it exempted their property from payment of all taxes, including that for schools and that is tantamount to a legislative declaration that they are classified as charitable or eleemosynary institutions. *Benjamin v. Housing Authority of Darlington, et al,* 198 S. C. 79, 15 S. E. (2d) 737. In this decision, the South Carolina Supreme Court stated:

> "The Congress, by enacting the Agricultural Adjustment Act of 1938, L. Stat., 31, 7 USCA #1281, et seq., the Bankhead-Jones Farm Tenant Act, L Stat. 522, 7 USCA ##1000-1029, the Rural Electrification Act of 1936, XLIX Stat. 1363, 7 USCA ##901-914, and other legislation whose purpose and effect is to provide special benefits for farm families, has recognized the necessity for improving living conditions and income in rural areas.
>
> "In the light of these facts we conclude that the program of the Housing Authority of Darlington County as outlined herein is for a public purpose, both because it will eliminate unsanitary dwelling units and because it will provide sanitary homes and living conditions for farm families of low income. While necessarily the program differs in detail from that of an urban housing development, we find nothing which would justify a decision differing from that of this Court in *McNulty v. Owens,* supra. (188 S. C. 377, 199 S. E. 425).
>
> "Since the property of the Darlington County Authority is public property and since the Authority is an instrumentality of Darlington County operated exclusively for the benefit of the public and not for revenue, the property is exempt from taxation under the provisions of Art. X., Section 4 of the Constitution of 1895. *State v. City of Columbia,* 115 S. C. 108, 104 S. E. 337; *McNulty v. Owens,* supra.
>
> "It is also exempt under the provisions of Art. X., Section 1, which authorizes the General Assembly to exempt property used 'for municipal, educational, literary, scientific, religious or charitable purposes.' The Legislature has, in the Housing Authorities Act, XL St. at Large, p. 440, exempted this property from taxation. The statute therefore makes operative the pro-

visions of Section 1 of Art. X and confirms the execution contained in Section 4 of Art. X."

The exemption has been allowed on the property of the Rural Electric Cooperatives from the time of the passage of the Special Act by virtue of which these Cooperatives exist and the exemption has never been questioned. Certainly, it would have been challenged if there had been the slightest doubt of its constitutionality. The property of cooperative associations generally under Sections 12-801 through 12-802 of the Code of Laws of South Carolina for 1952 is not exempt from taxation. No Act has been passed by the General Assembly to exempt such property from the payment of taxes and if such were enacted, it would be unconstitutional. *Ellerbe v. David, supra.*

The Opinion of the Court below held, (App. p. 44) "It is well settled in South Carolina that the power to prescribe what property shall be taxed implies the power to prescribe what property shall be exempt from taxation, and that in the absence of a constitutional provision to the contrary, the Legislature may exempt such classes of property as in its opinion, the public policy of the State requires." We submit that this constituted an erroneous statement of the law in South Carolina. The Constitution of South Carolina requires that all property which is alike in character and which is used for a like purpose be placed in the same classification and be accorded the same treatment as to taxation. It will be noted by reference to Section 65-1522, Sub-sections (44) and (45) of the 1952 Code of Laws of South Carolina as set forth in the Appendix, (p. 32) that all property of the Rural Electric Cooperatives is exempt from taxation while only the rural electric lines of the other utilities constructed since March 29, 1954, are exempted from taxation. Thus, the fact is that all of the property of the Rural Electric Cooperatives is exempt from taxation while only a part of the rural electric lines of the public utilities is exempted from taxation and none of the property of the latter used in constructing and operating their rural electric lines is exempted.

The General Assembly exempted the property of the Rural Electric Cooperatives from taxation because the Coop-

eratives are charitable or eleemosynary organizations. Their property is used for an eleemosynary, a charitable purpose. The property of Rural Electric Cooperatives being in one classification and the portion of the property of the privately owned utilities used in private electric service to rural residents being in another classification, the tax exemptions as to each can be made without violating any provisions of the State Constitution.

The Court below held, (App. p. 45) " . . . The defendant Cooperative in this case, although serving a public purpose of the state, was an association to provide citizens organized to secure for themselves the benefits of electric service at the lowest possible cost." We submit that the Petitioner does serve a commendable public purpose but the balance of the above quotation from the Opinion of the Court below would imply that petitioner is operated for profit and we further submit that the Court below did not arrive at the proper conclusion as to the nature and quality of the business of the Cooperative. It cannot be disputed that the object and purpose a Rural Electric Cooperative has in constructing rural electric lines is to fulfill a great public need by providing at actual cost electric energy to rural residents in sparsely settled and remote areas and to serve the rich, the poor, the educated and uneducated alike. It is forbidden by law to make a profit and in light of the foregoing, it is clear that the General Assembly of South Carolina has classified petitioner in its organization and operation and the nature and quality of its business to be eleemosynary.

CONCLUSION

An important question is presented for decision in the case at bar; one which has nationwide implications. For the protection of Federal funds and the Rural Electrification program throughout the nation, it is imperative, we submit, that the opinion of the Court below be reversed by this Court.

To date, the only decision which has been handed down by another appellate court on the question with which we are concerned and which is squarely in point, is the opinion in the

case of *Arkansas Valley Coop Rural Electric Co. v. Elkins*, supra, and the decision in that case is in direct conflict with the decision of the Court below. Also, the decision below is in conflict with the applicable statutory and common law of the State of South Carolina.

We respectfully submit that a Writ of Certiorari should be granted in this case for the reasons hereinabove set forth.

Respectfully submitted,

JAMES D. POAG,
RAY R. WILLIAMS,
WESLEY M. WALKER,
Counsel for Petitioner

LEATHERWOOD, WALKER, TODD & MANN
WILLIAMS & HENRY
Of Counsel

CODE OF LAWS OF SOUTH CAROLINA

CHAPTER 15

RURAL ELECTRIC COMPANY ACT

ARTICLE I

GENERAL PROVISIONS

§12-1001. SHORT TITLE.

This chapter may be cited as the "Rural Electric Cooperative Act."

§12-1002. DEFINITIONS.

In this chapter, unless the context otherwise requires:

(1) "Rural area" means any area not included within the boundaries of any incorporated or unincorporated city, town village or borough having a population in excess of twenty-five hundred persons;

(2) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof or any body politic;

(3) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership; and

(4) "Articles of incorporation" includes the articles of conversion of a converted corporation.

Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives."

§12-1003. WAIVER OF NOTICE.

§12-1004. ACKNOWLEDGMENTS.

#12-1005. EXEMPTION FROM CONTROL OF PUBLIC SERVICE COMMISSION.

Cooperative and foreign corporations transacting business in this State pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the Public Service Commission of this State.

#12-1006. SECURITIES ACT NOT APPLICABLE.

The provisions of Title 62 of this Code shall not apply to any note, bond, or other evidence of indebtedness issued by any cooperative or foreign corporation transacting business in this State pursuant to this chapter, to the United States of America or any agency or instrumentality thereof or to any mortgage or deed of trust executed to secure the same. The porvisions of said Title shall not apply to the issuance of membership certificates by any cooperative or any such foreign corporation.

#12-1007. CONSTRUCTION.

This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

#12-1008. RECORDING OF MORTGAGES: EFFECT THEREOF.

Any mortgage, deed or trust or other instrument executed by a cooperative or foreign corporation transacting business in this State pursuant to this chapter which by its terms creates a lien upon real and personal property then owned or after-acquired and which is recorded as a mortgage of real property in any county in which such property is located or is to be located shall have the same force and effect as if the mortgage, deed of trust or other instrument were also recorded or filed in the proper office in such county as a mortgage of personal property. Recordation of any such mortgage, deed of trust or other instrument shall cause the lien thereof to attach to all after-acquired property of the mortgagor of the nature therein described as being mortgaged or pledged thereby immediately

upon the acquisition thereof by the mortgagor and such lien shall be superior to all claims of creditors of the mortgagor and purchasers of such property and to all other liens, except liens of prior record, affecting such property.

§12-1009. FILING OF PAPERS BY SECRETARY OF STATE.

§12-1010. TRANSMISSION AND FILING IN CLERK'S OFFICES.

§12-1011. FEES OF SECRETARY OF STATE.

§12-1012. ALL PAPERS TO BE FILED IN QUADRUPLICATE.

§12-1013. ANNUAL FEES.

Each cooperative and each foreign corporation transacting business in this State pursuant to this chapter shall pay annually, on or before the first day of July, to the Secretary of State, a fee of ten dollars for each one hundred persons or fraction thereof to whom electricity is supplied within the State by it, but shall be exempt from all other excise and income taxes whatsoever.

ARTICLE II

INCORPORATION; BY-LAWS AND POWERS

§12-1021. FOR WHAT PURPOSE ORGANIZED.

Cooperative non-profit membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas.

§12-1022. ORGANIZERS.

Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

§12-1023. ARTICLES OF INCORPORATION.

The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed and acknowledged by each of the incorporators and shall state:

(1) The name of the cooperative;

(2) The address of its principal office;

(3) The names and addresses of the incorporators;

(4) The names and addresses of the persons who shall constitute its first board of trustees; and

(5) Any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

Such articles of incorporation shall be submitted to the Secretary of State for filing as provided in this chapter.

It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

#12-1024. NAME OF COOPERATIVE.

The name of each cooperative shall include the words "electric" and "cooperative," and the abbreviation "Inc."; provided, however, such limitation shall not apply if, from an affidavit made by the president or vice-president of a cooperative and filed with Secretary of State, it shall appear that the cooperative desires to transact business in another State and is precluded therefrom by reason of its name. The name of a cooperative shall distinguish it from any other corporation organized under the laws of or authorized to transact business in this State. The words "electric" and "cooperative" shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this State except a cooperative or a corporation transacting business in this State pursuant to the provisions of this chapter.

#12-1025. POWERS OF COOPERATIVE.

In addition to the powers conferred on all private corporations by #12-101, a cooperative shall have power:

(1) To generate, manufacture, purchase, acquire, accumulate and transmit electric energy and to distribute, sell, supply and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions and to other persons not in excess of ten per cent of the number of its members;

(2) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, wiring their premises and installing therein electric and plumbing fixtures, appliances, apparatus and equipment of any and all kinds and character and, in connection therewith, to purchase, acquire, lease, sell, distribute, install and repair such electric and plumbing fixtures, appliances, apparatus and equipment and to accept or otherwise acquire and to sell, assign, transfer, endorse, pledge, hypothecate and otherwise dispose of notes, bonds and other evidences of indebtedness and any and all types of security therefor;

(3) To make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of, and otherwise to assist such persons in, constructing, maintaining and operating electric refrigeration plants;

(4) To become a member in one or more other cooperatives or corporations or to own stock therein;

(5) To construct, purchase, take, receive, lease as lessee or otherwise acquire, to own, hold, use, equip, maintain, and operate and to sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, lands, buildings, structures, dams, plants and equipment and any and all kinds and classes of real or personal property whatsoever which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(6) To purchase or otherwise acquire, to own, hold, use and exercise and to sell, assign, transfer, convey, mortgage, pledge, hypothecate or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights of way and easements;

(7) To borrow money and otherwise contract indebtedness, to issue notes, bonds and other evidences of indebtedness therefor and to secure the payment thereof by mortgage, pledge, deed of trust or any other encumbrance upon any or all

of its then owned or after-acquired real or personal property, assets, franchises, revenues or income;

(8) To construct, maintain and operate electric transmission and distribution lines along, upon, under and across all public thoroughfares, including without limitation of the generality of the foregoing, all roads, highways, streets, alleys, bridgese and causeways, and upon, under and across all publicly owned lands, subject however, to the requirements in respect of the use of such thoroughfares and lands that are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems;

(9) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems;

(10) To conduct its business and exercise any or all of its powers within or without this State; and

(11) To do and perform any and all other acts and things and to have and exercise any and all other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.

#12-1026. BY-LAWS.

ARTICLE III

PROVISIONS AFFECTING MEMBERS

#12-1031. MEMBERSHIP.

No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy furnished by the cooperative when such electric energy shall be available through its facilities. The by-laws of a cooperative may provide that any person, including an incorporator, shall cease to be a member thereof if he shall fail or refuse to use electric energy made available by the cooperative or if electric energy shall not be made available to such person by the cooperative within a specified time after such person

shall have become a member thereof. Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect of membership.

#12-1032. MEETINGS.

#12-1033. QUORUM.

#12-1034. VOTING.

#12-1035. WHEN CONSENT OF MEMBERS REQUIRED FOR SALE, MORTGAGE OR LEASE.

#12-1036. PROPOSITIONS PRESENTED BY NOT LESS THAN TEN PER CENT OF MEMBERS.

#12-1037. REFUNDS TO MEMBERS.

Revenues of a cooperative for any fiscal year in excess of the amount thereof necessary:

(1) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(2) To pay interest and principal obligations of the cooperative coming due in such fiscal year;

(3) To finance or to provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(4) To provide a reasonable reserve for working capital;

(5) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(6) To provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative;

Shall unless otherwise determined by a vote of the members

be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year. Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same become due.

#12-1038. LIABILITY OF MEMBERS.

The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative and no member shall be liable or responsible for any debts of the cooperative.

ARTICLE IV.

TRUSTEES, OFFICERS AND EMPLOYEES.

#12-1041. TRUSTEES.

The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, and the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

If a husband and wife hold a joint membership in a cooperative either one, but not both, may be elected a trustee.

The board of trustees may exercise all of the powers of a cooperative except such as are conferred upon the members by this chapter or its articles of incorporation or by-laws.

#12-1042. VOTING DISTRICTS FOR TRUSTEES AND FOR DELEGATES.

#12-1043. COMPENSATION OR EMPLOYMENT OF TRUSTEE.

#12-1044. ANNUAL ELECTION AND TERM.

#12-1045. PERMISSIBLE DIVISION INTO CLASSES.

#12-1046. QUORUM OF TRUSTEES.

#12-1047. OFFICERS AND EMPLOYEES.

The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

ARTICLE V.

AMENDMENT, CONSOLIDATION AND MERGER

#12-1051. AMENDMENT OF ARTICLES OF INCORPORATION.

#12-1052. CHANGE OF PRINCIPAL OFFICE.

#12-1053. CONSOLIDATION OF COOPERATIVES.

#12-1054. MERGER INTO ANOTHER COOPERATIVE.

#12-1055. EFFECT OF CONSOLIDATION OR MERGER.

ARTICLE VI.

DISSOLUTION

#12-1056. DISSOLUTION BEFORE COMMENCING BUSINESS.

#12-1057. DISSOLUTION AFTER COMMENCING BUSINESS.

#12-1058. ACTION OF BOARD AND MEMBERS.

#12-1059. CERTIFICATE OF DISSOLUTION AND AFFIDAVIT.

#12-1060. FILING AND EFFECT THEREOF.

#12-1061. NOTICE OF WINDING UP.

#12-1062. BOARD OF TRUSTEES TO WIND UP AFFAIRS.

#12-1063. ARTICLES OF DISSOLUTION.

Article VII.

Conversion of Other Corporations Into Cooperatives.

§12-1071. conversion of certain corporations into cooperatives.

§12-1072. articles of conversion.

§12-1073. approval at membership meeting.

§12-1074. execution of articles and affidavit; submission to secretary of state.

Article VIII.

Foreign Rural Electric Cooperatives

§12-1081. foreign rural electric cooperatives may do business in state.

§12-1082. must appoint secretary of state agent.

§12-1083. suits and mortgages, etc.

Article X, Section I

Constitution of the State of South Carolina

"The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes: . . ."

1942 Code of Laws of

South Carolina, Section 2578, Sub-Section 61

"All property of every kind now owned by cooperatives organized under the provisions of 8555-91 through 8555-123 is hereby exempted from taxation for state, county, school, municipal, and special taxes, for a period of five (5) years from June

11, 1941. Provided, also, that such cooperatives are likewise exempted from payment of any taxes which have accrued prior hereto, provided, also, that all rural electric lines constructed after the enactment of this law in rural territory not now serviced by electric power lines and used to distribute, sell, supply and dispose of electric energy over rural areas shall be exempt for a period of five years from June 11, 1941, from payment of State, County, school, and municipal property taxes."

This exemption was extended for five (5) years by Act of General Assembly of 1945 (See Acts 1945, Page 107). This exemption was made permanent by Act of General Assembly of 1951 (See 1951 Acts, Page 658). Permanent exemption in 1952 Code of Laws, See the following:

1952 Code of Laws of South Carolina

Chapter 16 - The Assessment of Property Taxes
Article 2. - Property Taxable: Exemptions

SECTION 65-1522 - GENERAL EXEMPTIONS FROM TAXES:

SUB-SECTION (44), CERTAIN RURAL ELECTRIC LINES. All property of every kind owned on April 1, 1951 by rural electric cooperatives organized under the provisions of Chapter 15 of Title 12 and this exemption shall include State, county, school, municipal and special taxes;

SUB-SECTION (45), OTHER RURAL ELECTRIC LINES. All other rural electric lines constructed since March 29, 1945 and used to distribute, sell, supply and dispose of electric energy over rural areas; but this exemption shall extend only to State, county, school and municipal property taxes.

Article X, Section 4

Constitution of the State of South Carolina

There shall be exempted from taxation all County, township and municipal property used exclusively for public purposes and not for revenue, and the property of all schools, colleges and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind,

idiotic and indigent persons, except where the profits of such institutions are applied to private uses; all public libraries, churches, parsonages and burying grounds; but property of associations and societies, although connected with charitable objects, shall not be exempt from State, County or municipal taxation: PROVIDED, That as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, parsonages and burial grounds, although connected with charitable objects.

OPINION AND ORDER

C. A. 1523

In this case the complaint alleges that the plaintiff received severe injuries as a result of the negligence and wilfulness of the defendant, its agents, servants and employees acting within the course and scope of their employment.

The case is before me upon defendant's motion to dismiss upon the following grounds: "the Complaint fails to state a claim against the defendant upon which relief can be granted in that defendant is a non-profit rural electrical cooperative and, as such, is not subject to suit for tort."

The Blue Ridge Rural Electrical Cooperative, Inc. was organized under the authority of the Rural Electric Cooperative Act of South Carolina, as set out in Chapter 15 of Volume 1 of the Code of Laws of South Carolina for 1952; it has been operated for the profit of no one and none of its members or patrons or anyone else receives any profit as a result of the operation thereof; it has only limited powers with regards to its funds and they are as set forth in Section 12-1037 of the Code of Laws of South Carolina for 1952, and are as follows: (1) To defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year; (2) To pay interest and principal obligations of the cooperative coming due in such fiscal year; (3) To finance or to provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the

board of trustees; (4) To provide a reasonable reserve for working capital; (5) To provide a reserve for the payment of indebtedness of the cooperative maturing more than one year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and (6) To provide a fund for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

No provision has been made in the statute for any fund for the payment of tort claims and none has been set up by the defendant for that purpose; since its inception and up until the present time, the funds of the defendant have been used strictly in accordance with the statutory provisions heretofore set forth.

The question of the liability of a charitable institution to respond in damages for the negligence of its employees, agents and servants has been before the South Carolina Courts on several occasions. Regardless of what the rule in other jurisdictions may be the question has been settled in South Carolina by the adoption of the rule of full immunity of such institutions from the torts of their agents and servants. *Lindler v. Columbia Hospital*, 98 S. C., 25, 81 S. E., 512; *Vermillion v. Woman's College of Due West*, 104 S. C., 197, 88 S. E., 649; *Peden v. Furman University*, 155 S. C., 1, 151 S. E., 907; *Caughman v. Columbia Y.M.C.A.*, 212 S. C., 337, 47 S. E. (2d) 788.

The reason for the rule was clearly stated in *Vermillion v. Woman's College of Due West*, 104 S. C., 197, 88 S. E., 649, and recently quoted with approval by Mr. Justice Oxner in *Caughman v. Columbia Y.M.C.A.*, 212 S. C., 337, at page 344, 47 S. E., (2d) 788, as follows: " '****The exemption of public charities from liability in actions for damages for tort rests not upon the relation of the injured person to the charity, but upon grounds of public policy, which forbid the crippling or destruction of charities which are established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the cor-

poration itself, or of its superior officers or agents, or of its servants or employees. The principle is that, in organized society, the rights of the individual must, in some instances, be subordinated to the public good. It is better for the individual to suffer injury without compensation than for the public to be deprived of the benefit of the charity. The law has always favored and fostered public charities in ways too numerous to mention, because they are most valuable adjuncts of the state in the promotion of many of the purposes for which the state itself exists." "

The defendant is a non-profit membership cooperative organized and operating under the provisions of the South Carolina Rural Electric Cooperative Act, Sections 12-1001 et seq. of the Code of Laws of South Carolina, 1952. This statute was passed as a result of and to take advantage of the Federal Rural Electrification Act, 7 USCA 901-914, which provided financial assistance in the form of long-term loans at favorable interest rates to local rural electric cooperatives.

The purpose of the South Carolina Act is stated in Section 12-1021, Code of Laws of South Carolina, 1952, as follows: "Cooperative non-profit membership corporations may be organized under this chapter for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas."

In *Bookhart v. Elec. Power Coop. Inc.*, 219 S. C., 414 at page 421, 65 S. E. (2d), 781, the Supreme Court of South Carolina said: "As pointed out in the judgment under review, the need of available electric energy in rural, farm areas, of which this State is chiefly composed, was compelling and the great progress by which it has been met since the passage of the law is common knowledge."

Under the South Carolina statute, such cooperatives are exempt from regulation by the Public Service Commission. Section 12-1005, *Code of Laws of South Carolina*, 1952. Securities and evidences of indebtedness issued by these cooperatives are exempt from the provisions of the South Carolina Securities Act. Section 12-1006, *Code of Laws of South Carolina*, 1952.

Rural Electric Cooperatives in South Carolina pay $10 to the Secretary of State annually for each one hundred persons to whom electricity is furnished and in return are exempted from all other excise and income taxes imposed by the State of South Carolina. Section 12-1013, *Code of Laws of South Carolina*, 1952. It is obvious that such cooperatives have a special and favored position under the South Carolina statutes.

The defendant Blue Ridge Rural Electric Cooperative is a non-profit cooperative and no one derives any profit from its operation. *Green County Rural Electric Cooperative v. Nelson*, 12 N. W. (2d) 886 (Iowa 1944). As a non-profit cooperative performing a laudable purpose in which the public and the State are interested, every reason given by the South Carolina Court in *Vermillion v. Woman's College of Due West*, supra, for exemption from liability for tort applies. The same rule which applies to a hospital, a woman's college or a Y.M.C.A. should likewise apply to a Rural Electric Cooperative. The Arkansas Court applied the same rule in the case of *Arkansas Valley Co-Op. Rural Electric Co. v. Elkins*, 200 Ark. 883, 141 S. W. (2d) 538, where it was specifically held that a non-profit sharing rural electric cooperative created under a statute similar to the South Carolina statute could not be held liable in damages for injuries resulting from a tort of one of its employees in the absence of a statute providing for such liability. There is no such statute in South Carolina.

It is my opinion that the defendant, being a non-profit sharing membership cooperative created solely for the purpose of providing electric energy to rural areas which would not otherwise receive it, is not, under the South Carolina law, subject to suit in tort. The defendant's motion to dismiss should be granted, and

IT IS SO ORDERED.

C. C. WYCHE,
United States District Judge

Dated:
Spartanburg, South Carolina,
February 18, 1954.

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 6789

James Earl Byrd,
Appellant,

versus

Blue Ridge Rural Electrical Cooperative, Inc.,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF SOUTH CAROLINA, AT ANDERSON. CIVIL.

(Argued June 9, 1954. Decided September 2, 1954.)

Before PARKER, Chief Judge, and SOPER and DOBIE, Circuit Judges.

SOPER, Circuit Judge:

James Earl Byrd sued Blue Ridge Rural Electrical Cooperative, Inc., to recover damages for the loss of both arms and other injuries which he alleged were caused by the negligence of the employees of the defendant in supplying and distributing electric power in certain counties in South Carolina. On motion of the defendant the suit was dismissed by the District Judge on the ground that the defendant is not subject to liability for tort under the laws of South Carolina. This appeal followed.

The Judge pointed out that the defendant is a non-profit cooperative, organized under the Rural Electric Cooperative Act, set out in Chapter XV of the South Carolina Code of 1952, for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. He said that a co-

operative is in a special and favored position under the South Carolina statutes since it is exempt from control by the Public Service Commission, § 12-1005; and from the provisions of the South Carolina Securities Act, § 12-1008; and from the payment of excise and income taxes except the payment of $10 annually to the Secretary of State for each one hundred persons to whom it furnishes electricity, § 12-1013. He held that the defendant Cooperative serves a laudable public purpose and that it is therefore exempt from liability for tort for the reasons given by the Supreme Court of South Carolina for the exemption of public charities from such liability in *Vermillion v. Woman's College of Due West*, 104 S. C. 197, as quoted with approval in *Caughman v. Columbia Y.M.C.A.*, 212 S. C. 337, 344, where the court said:

> "The exemption of public charities from liability in actions for damages for tort rests not upon the relation of the injured person to the charity, but upon grounds of public policy, which forbid the crippling or destruction of charities which are established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the corporation itself, or of its superior officers or agents, or of its servants or employees. The principle is that, in organized society, the rights of the individual must, in some instances, be subordinated to the public good. It is better for the individual to suffer injury without compensation than for the public to be deprived of the benefit of the charity. The law has always favored and fostered public charities in ways too numerous to mention, because they are most valuable adjuncts of the state in the promotion of many of the purposes for which the state itself exists."

The Judge abstained from the specific holding that a cooperative is a charitable organization but held that its nature is such that it must be given the exemption for the same reasons that it is accorded to charitable corporations. The defendant adheres to this position but at the same time it contends that a rural electric cooperative in South Carolina is

eleemosynary in its nature and quasi-public by statute. We think that the judgment cannot be sustained unless the Co-operative is truly a charitable corporation under the law of South Carolina, because these bodies are the only corporations, other than governmental or public bodies, that are exempt from liability for tort under the decisions of that state.*

In our judgment a cooperative formed under the laws of South Carolina, whether organized under Ch. 13 of the Code relating to cooperative associations generally, or under Ch. 15 of the Code, which embodies the rural electrical cooperative act, is not a charitable corporation in the sense in which this term is used in the laws of South Carolina. Our conclusion is not based upon the power conferred upon a South Carolina cooperative to sue and be sued, since charitable corporations have this power in South Carolina, see § 12-758 of the Code, but the nature and quality of the business of the cooperative is in our judgment the determining factor. The statute relating to cooperative associations generally, set out in Ch. 13 of the Code, empower an association created thereunder to conduct any agricultural, dairy, mercantile, manufacturing or mechanical business on the cooperative plan, and to buy, sell and deal in the products of any other cooperative company organized under the statute. Section 12-1022 of Rural Electric Cooperative Act, set out in Chapter 15 of the Code, authorizes the organization of a cooperative thereunder by five or more natural persons or two or more cooperatives, and confers upon such a cooperative, in addition to the powers conferred on all private corporations by § 12-101 of the Code, the power to generate, manufacture, purchase, distribute and sell electric energy to its members, to governmental agencies, and to other persons not in excess of ten per cent of its members in number; to construct, purchase and lease electrical transmission and distribution lines and generating plants, to borrow money and

*Decisions as to the liability of electric cooperatives for tort under varying local conditions are conflicting. In *Arkansas Valley Co-op Rural Electric Co. v. Elkins*, 200 Ark. 883, the cooperative was held to be exempt; but in *Consolidated Electric Coop. v. Panhandle E. Pipe Line*, 8 Cir., 189 F. 2d 777, the opposite conclusion was reached.

contract indebtedness, and to exercise the power of eminent domain for the construction and operation of electric distribution lines; and to do all acts and exercise all powers necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized; Section 12-1025.

Charitable organizations, on the other hand, are organized under Chapter 12 of the Code entitled Charitable, Social and Religious Corporations, which authorizes the Secretary of State to issue certificates of incorporation to any church, college, school, lodge, society, company or other association having no capital stock divided into shares, but holding or desiring to hold property in common for religious, educational, social, fraternal, charitable or eleemosynary purposes. It is to corporations formed for these purposes that the exemption from liability for tort has been extended by the Supreme Court of South Carolina. The philosophy underlying this doctrine is clearly considered and set out in the following passage from *Vermillion v. Woman's College of Due West*, 104 S. C. 197, 200, 201, where the ruling announced in *Lindler v. Columbia Hospital*, 98 S. C. 25, was reaffirmed. The court said:

> "***the exemption of public charities from liability in actions for damages for tort rests not upon the relation of the injured person to the charity, but upon grounds of public policy, which forbid the crippling or destruction of charities which are established for the benefit of the whole public to compensate one or more individual members of the public for injuries inflicted by the negligence of the corporation itself, or of its superior officers or agents, or of its servants or employees. The principle is that, in organized society, the rights of the individual must, in some instances, be subordinated to the public good. It is better for the individual to suffer injury without compensation than for the public to be deprived of the benefit of the charity. The law has always favored and fostered public charities in ways too numerous to mention, because they are most valuable adjuncts of the State in the promotion of many of the purposes for which the State itself exists. ***

> "This rule does not put such charities above the law, for their conduct is subject to the supervision of the Court of equity; nor does it deny an injured person a remedy for his wrong. It is merely an exception to the rule of *respondeat superior*, which is itself based on reasons of public policy. The injured person has his remedy against the actual wrongdoer."

In harmony with this doctrine is the decision in *Johnson v. Spartanburg County Fair Ass'n*, 210 S. C. 46, where it was held that a county fair association was not an eleemosynary corporation. Rejecting the contention that the fair association should be so regarded because it had been conducted from its inception as a charitable or eleemosynary corporation, the court said that the word "eleemosynary" in the statute was used in a broad sense to denote an unselfish purpose to advance the common good in any form or manner, and also pointed out that the fair association was not incorporated as a charitable corporation under the provisions of the South Carolina Code but was organized under the statute relating to the creation of business corporations.

The importance and extent of the business of a rural electric cooperative in South Carolina is shown in *Bookhart v. Central Electric Power Coop., Inc.*, 219 S. C. 414, which related to the exercise by such a body of the right of eminent domain. The cooperative in that case comprised seventeen subsidiary cooperative member corporations which had distribution systems financed by the Rural Electrification Administration and were in competition with other power companies in other sections of the state. It was held that the cooperative itself was a public service corporation and as such obliged to make membership available without arbitrary or unreasonable limitations, and that the grant to it of the right of eminent domain was a constitutional exercise of legislative power. Public Service Corporations in South Carolina are of course liable for damages caused by their tort. *Hill v. Carolina Power & Light Co.*, 204 S. C. 83.

Obviously a rural electric cooperative is not designed to

accomplish the beneficial purposes in the public interest which a charitable association in the accustomed sense, such as a church, college or hospital, is organized to serve. It does not belong to the same category. It is essentially a business project designed to promote the convenience and material welfare of its members rather than the common good. Rural electrification has added much to the comfort of residents of rural areas and this worthy purpose has been advanced by the federal government through the loan of funds under the Federal Rural Electrification Act, 7 U.S.C.A. §§ 901 et seq, and by the State of South Carolina in relieving the organizations of certain governmental control and of certain taxes. The statutes of the State, however, do not specifically grant exemption from liability for tort, and we do not think that we are justified in relieving them of a burden which inevitably attends the operation of a public utility and is regarded as an operating expense under modern conditions. The fact that the members of the association seek no profit as such, other than the enjoyment of electric service, does not transform the business venture into a charitable enterprise.

The Cooperative makes the further contention that it must be considered a charitable corporation because it is not only exempted by § 12-1013 from all income and excise taxes upon the payment of an annual fee of $10 for each one hundred persons served, but is also exempted from all property taxes by § 65-1544 (44) of the Code. Under these statutes a rural electric cooperative fares better than other rural electric lines which are exempted only from state, county, school and municipal property taxes under § 65-1522(45). The State Constitution in Art. 10 § 1 requires that the General Assembly provide by law for a uniform and equal rate of taxes; and in Art. 10 § 5 that taxes shall be uniform as respects person and property, and equal rate of taxes. It is argued in view of these provisions that the distinction between the taxes imposed upon rural electric cooperatives and the taxes imposed upon other rural electric lines can only be sustained constitutionally on the

theory that the legislature was exercising the power conferred upon it by Article 10 § 1 of the Constitution to exempt property used for charitable purposes.

The Cooperative stresses the fact that the primary purpose of the privately owned electric utility is to make a profit whereas the object and purpose of the Cooperative is to furnish electric energy to residents of sparsely settled and remote areas so as to promote their welfare and raise their standard of living. These facts, it contends, justifies the conclusion of the legislature that the Cooperative is a charitable body.

In this connection attention is called to the case of *Benjamin v. Housing Authority of Darlington County*, 198 S. C. 79, in which the court held that a body set up by the legislature to construct low cost houses for the purpose of eliminating slums and providing homes for families of low income in rural areas was formed for a public purpose. Since the authority was an instrumentality of the county, operated exclusively for the benefit of the public and not for revenue, and the property owned by it was public property, it was held that the property was exempt from taxation under the provisions of Art. 10 § 4 of the Constitution, which provides for the exemption from taxation of all county, township and municipal property used exclusively for public purposes and not for revenue. The court also held that the provision of the Housing Authority Act exempting the property of the authority was within the power conferred upon the legislature by Art. 10 § 1 to exempt all property used for municipal, educational, literary, scientific, religious or charitable purposes. In like manner it is now contended, the statutes exempting the property of the Cooperative from taxation must be taken as an exercise of the power of the legislature to exempt property used for charitable purposes.

We are also asked to consider the decision of the Supreme Court of South Carolina in *Rice Hope Plantation v. South Carolina Public Service Authority*, 216 S. C. 500, which held that the Authority was not subject to suit in an action *ex delicto* against it for the reason that it was an agency of the State and

as such entitled to the immunity attaching to the sovereignty. There was no provision in the statute which expressly gave it this immunity and yet it was held to be exempt; and in like manner it is urged that the electric cooperative should be held to be immune.

There is no merit in these contentions. It is not necessary to invoke the constitutional power to exempt from taxation property used for charitable purposes in order to sustain the statutes which exempt the property of rural electric cooperatives. It is well settled in South Carolina that the power to prescribe what property shall be taxed implies the power to prescribe what property shall be exempt from taxation, and that in the absence of a constitutional provision to the contrary, the legislature may exempt such classes of property as in its opinion the public policy of the state requires. It is likewise settled that every presumption must be adjudged in favor of such legislative action and it must not be declared invalid unless the conflict with the constitution is irreconcilable. *Duke Power Co. v. Bell, County Treasurer*, 156 S. C. 299, 310, 311. In the exercise of this power the legislature has listed the exemptions from taxation set out in § 65-1522(1) to (45) and this section has been held constitutional in *Epworth Orphanage v. Wilson*, 185 S. C. 243; *Strong v. Sumter*, 185 S. C. 203.

In *Duke Power Co. v. Bell*, supra, the power of the legislature to exempt from taxation manufacturers in certain counties of the state was upheld as within the power of the legislature to exempt property for municipal purposes under Art. 10 § 1 of the Constitution; and in these and subsequent cases the words "municipal purposes" have been given a broad meaning, signifying a public or governmental purpose as distinguished from a private purpose. See *Ellerbe v. Devold, County Treas.*, 193 S. C. 332; *Byrd v. Lawrimore, County Treas.*, 212 S. C. 281. That the rural electric cooperatives serve a beneficial public purpose in South Carolina is a concession in this case and their exemption from taxation is accordingly justified on this ground.

It cannot be said that the exemption violates the provisions as to uniformity of taxation contained in Art. 10 §§ 1 and 5 of the State Constitution or the due process or the equal protection clauses of the 14th Amendment to the Federal Constitution. The fundamental rule is that the State legislature has the right to make reasonable classifications of persons and property for taxation purposes. It is elementary that if the classification bears a reasonable relation to the legislative purpose sought to be effected, and if all the members of each class are treated alike under similar circumstances, the equal protection clauses of the Constitutions are fully complied with. *Duke Power Co. v. Bell*, supra, p. 318.

The distinction between the rights and liabilities of the public bodies considered in *Benjamin v. Housing Authority of Darlington County, et al.*, 198 S. C. 79, and *Rice Hope Plantation v. South Carolina Public Service Authority*, 216 S. C. 500, hereinbefore referred to, on the one hand, and the rights and liabilities of rural electric cooperatives in South Carolina on the other, is clear. Both of the former bodies were agencies of the government and it was in accord with the law of the state to hold the one free from liability for tort and to hold that the other served a charitable purpose in providing cheap housing for the indigent. On the other hand, the defendant cooperative in this case, although serving a public purpose of the State, was an association to provide citizens organized to secure for themselves the benefits of electric service at the lowest public cost. It is clear that the cooperative was not free from liability for tort either as a public body or a charitable organization.

The judgment of the District Court will be reversed and the case remanded for further proceedings.

Reversed and Remanded.

FILED
DEC 4 1954
HAROLD B. WILLEY, C

Supreme Court of the United States

OCTOBER TERM, 1954

No. 443

BLUE RIDGE ELECTRICAL COOPERATIVE, INC.,
PETITIONER,

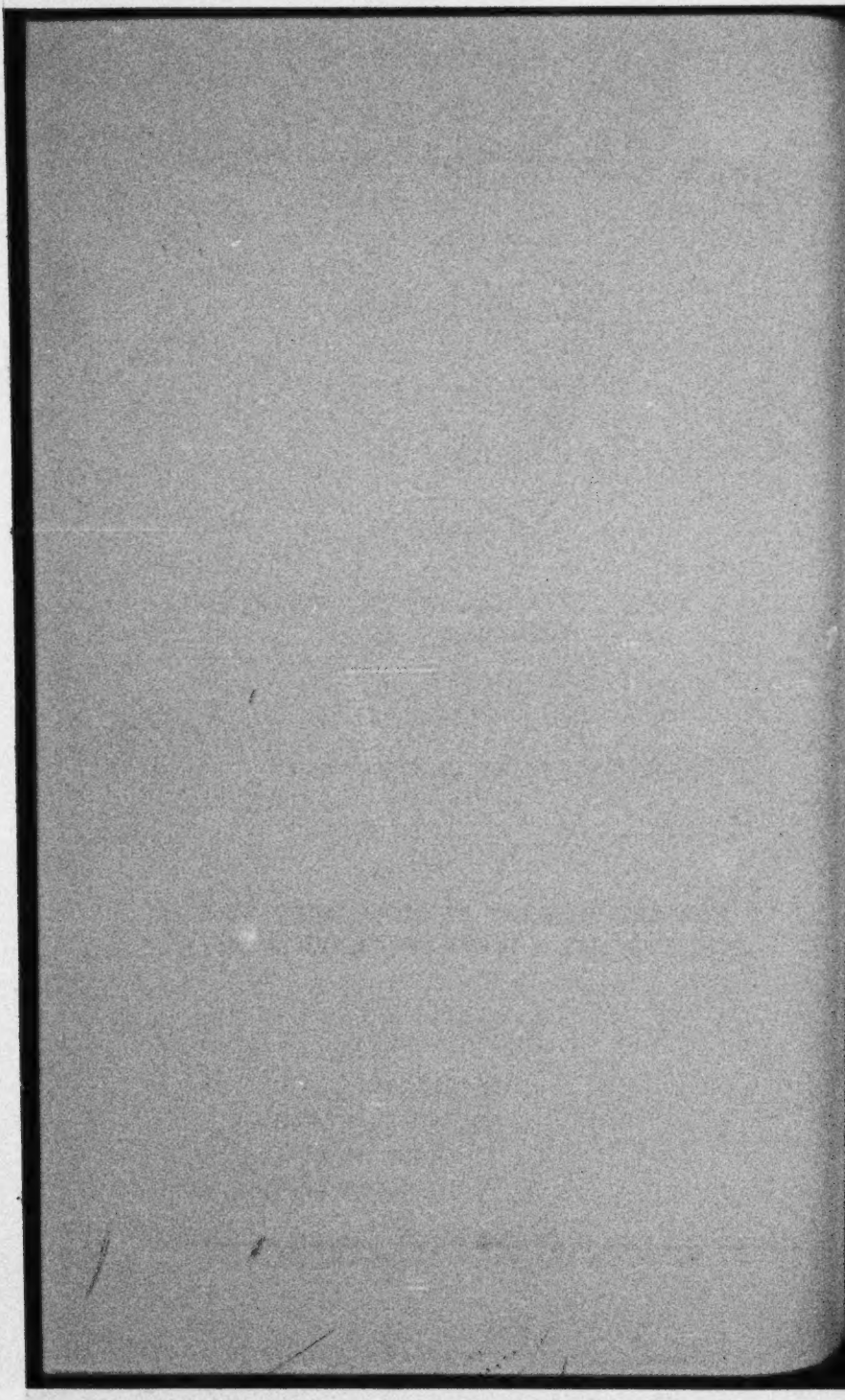
versus

JAMES EARL BYRD, RESPONDENT

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

HENRY HAMMER,
HENRY H. EDENS,
Columbia, S. C.,
Attorneys for Respondent.

The R. L. Bryan Company, Legal Printers, Columbia, S. C.



INDEX

	Page
Opinions Below	1
Jurisdiction	2
Statement of Case	2
Question Presented	2
Argument	2
Only public bodies and charitable organizations are exempt from tort liability in South Carolina; there is no contention that petitioner qualifies as a public body for such exemption, nor can it be tenably contended that it qualifies as a charity for such exemption under South Carolina law because:	
1. Petitioner was not organized under that section of the South Carolina Code which provides for the organization of charitable, social and religious organizations; therefore, it cannot qualify for immunity from tort liability as a charitable corporation	4
2. The provisions of the South Carolina Rural Electric Cooperative Act under which petitioner was organized does not qualify it for immunity from tort liability as a charitable corporation	5
3. Legislative exemption from taxation granted to petitioner does not qualify it for immunity from tort liability as a charitable organization	7
Conclusion	8

TABLE OF CASES

	Page
Benjamin v. Housing Authority of Darlington County, 198 S. C. 79	3
Bookhard v. Central Electric Power Coop., Inc., 219 S. C. 414	6
Byrd v. Lawrimore, County Treasurer, 212 S. C. 281	7
Caughman v. Columbia Y. M. C. A., 212 S. C. 337	3, 7
Consolidated Electric Cooperative v. Panhandle E. Pipeline Co., 8 Cir., 189 F. (2d) 777	6
Duke Power Co. v. Bell, 156 S. C. 299	7
First Wisconsin National Bank of Milwaukee et al. v. Wisconsin, 119 F. (2d) 999	7
Hill v. Carolina Power & Light Co., 24 S. C. 83	6
Johnson v. Spartanburg County Fair Ass'n, 210 S. C. 46	4
Keifer & Keifer v. Reconstruction Finance Corporation, 306 U. S. 38	6
Langhein v. Denison Fire Dept. Swimming Pool Ass'n, 21 N. W. (2d) 295	7
Lightly v. Carbon County Agr. Ass'n, 31 Fed. Supp. 809	7
Lindler v. Columbia Hospital, 98 S. C. 25	3, 4
Magnum Import Co. v. Houbigant, Inc., 252 U. S. 159	2
Michael v. St. Paul Mercury Indemnity Co., 92 Fed. Supp. 140	7
Peden v. Furman University, 155 S. C. 1	3
Prato v. Home Owners Loan Corporation, 106 F. (2d) 128	6
Richardson v. Harmon, 222 U. S. 96	6

TABLE OF CASES—Continued

PAGE

Schuster v. Ohio Farmers Coop. Milk Ass'n, 61 F. (2d) 337 7

Vermillion v. Woman's College of Due West, 104 S. C. 197 3

Woods, ex parte, 143 U. S. 202 2

STATUTES AND OTHER REFERENCES

Chapter 12, Title 12, South Carolina Code for 1952 .. 4

Chapter 15, Title 12, South Carolina Code for 1952 ..4, 5

Section 12-1025, South Carolina Code for 1952 5

Section 12-1037, South Carolina Code for 1952 5

Article X, Section 1, South Carolina Constitution 7

14 Mississippi Law Journal, page 190 6

Supreme Court of the United States

OCTOBER TERM, 1954

No. 443

BLUE RIDGE ELECTRICAL COOPERATIVE, INC., PETITIONER,

versus

JAMES EARL BYRD, RESPONDENT

BRIEF FOR RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the District Court is reported in 118 Fed. Supp. 868 and is printed in full in the appendix to the petition for a writ of certiorari (pp. 33-36). The opinion of the Court of Appeals is reported in 215 F. (2d) 542 and is printed in full in the appendix to the petition for a writ of certiorari (pp. 37-45).

JURISDICTION

The petitioner seeks to invoke the jurisdiction of this Court under 28 U. S. C. A. 1254 (1) and Section 1 (b) of Rule 19 of the Supreme Court.

We respectfully submit that the jurisdiction of this Court should not be invoked for the reasons hereinafter urged.

STATEMENT OF CASE

The statement of the case is adequately set forth in the petition for a writ of certiorari under the heading "Summary Statement of Matter Involved".

QUESTION PRESENTED

Whether the Court below decided an important State question in a way in conflict with applicable State law.

ARGUMENT

The decision of the Court of Appeals does not involve an important question of State law, nor has the Court decided the question in a way in conflict with applicable State law.

It is well settled that unless a question of gravity and importance is herein involved this Court will not require a case to be certified for review and determination. *Ex parte Woods*, 143 U. S. 202; Rule 19 of Revised Rules of the Supreme Court of the United States; nor will this Court assume jurisdiction merely to give the defeated party in the Court of Appeals another hearing, *Magnum Import Co. v. Houbigant, Inc.*, 252 U. S. 159.

We respectfully submit that the conclusion by the Court of Appeals holding that the petitioner is subject to liability in South Carolina for the torts of its agents upon the ground that it cannot qualify for exemption either as

a public body or a charitable organization does not fall within the category of questions of such gravity and general importance as to require the review of the conclusion of the Court below in reference to it.

Of course, the question decided by the Court below is important to the petitioner itself and involves the liability of rural electric cooperatives for torts under the law of South Carolina, but, nevertheless, the question was decided by the Court of Appeals in accordance with applicable law and does not rise to that degree of importance wherein this Court should certify the question for review. Although petitioner has the burden of proving the jurisdiction of this Court to grant certiorari, it has failed to point out in its petition how or in what manner the question decided by the Court below is an important one of state law.

Assuming, however, for the purpose of argument, that the question decided by the Court below may be an important one of local state law, it is clear from the decision of the Court below that the question was decided in accordance with applicable local law as we show below.

It is well settled in South Carolina that corporations other than charitable organizations and public bodies are not immune from liability for their torts. *Lindler v. Columbia Hospital*, 98 S. C. 25; *Vermillion v. Woman's College of Due West*, 104 S. C. 197; *Peden v. Furman University*, 155 S. C. 1; *Caughman v. Columbia* Y. M. C. A., 212 S. C. 337; *Benjamin v. Housing Authority of Darlington County*, 198 S. C. 79.

It is thus clear that petitioner cannot qualify for exemption from tort liability in South Carolina because it is neither a public body nor a charitable corporation. There is no contention in the instant case that petitioner is a public body, and we submit that there can be no tenable contention that petitioner is a charitable organization within

the meaning of the South Carolina decisions exempting charitable organizations from tort liability, as we show below.

1. Petitioner was not organized under the provisions of the South Carolina Code which provide for the organization of Charitable, Social and Religious corporations:

The South Carolina Code, Chapter 12 of Title 12, provides for the organization of Charitable, Social and Religious corporations. Under this Statute the Secretary of State is authorized to issue certificates of incorporation to any church, college, school, lodge, society, company or other association having no capital stock divided into shares, but holding or desiring to hold property in common for religius, educational, social, fraternal, charitable or eleemosynary purposes. As pointed out by the Court below it is to corporations formed for these purposes that the exemption from liability for tort has been extended by the Supreme Court of South Carolina. *Johnson v. Spartanburg County Fair Ass'n*, 210 S. C. 46; *Lindler v. Columbia Hospital, supra.*

In the case at bar the petitioner was not organized under the provisions of the South Carolina Code providing for the incorporation of Charitable, Social and Religious corporations. Instead, it was organized under the provisions of the Rural Electric Cooperative Act, Chapter 15 of Title 12, of the Code of South Carolina. In *Johnson v. Spartanburg County Fair Ass'n, supra,* the South Carolina Supreme Court, in rejecting the contention that the fair association should be regarded as a charitable organization, pointed out that the fair association was not incorporated as a charitable corporation under the provisions of the South Carolina Code, but was organized under another provision of the Code.

2. The provisions of the Rural Electric Cooperative Act, Chapter 15, Title 12 of the Code, under which petitioner was organized, does not qualify petitioner for immunity from tort liability as a charitable corporation:

It is respectfully submitted that a reading of the provisions of the Statute under which the petitioner was formed clearly shows that the nature and quality of the business of a rural electric cooperative cannot qualify it as a charitable organization so as to be immune from tort liability under South Carolina law.

The Statute relating to the formation of rural electric cooperatives as set out in Chapter 15 of the Code confers upon such corporations all the powers of private corporations. In addition, such cooperatives are granted the power to generate, manufacture, purchase, distribute and sell electric energy to its members, to governmental agencies, and to other persons not in excess of ten per cent of its members in number; to construct, purchase and lease electrical transmission and distribution lines and generating plants, to borrow money and contract indebtedness, and to exercise the power of eminent domain for the construction and operation of electric distribution lines; and to do all acts and exercise all powers necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized; Section 12-1025, South Carolina Code for 1952. And in Section 12-1037 of the Act under which petitioner was organized it is provided that the revenues of the corporation, after defraying the necessary expenses of operation and maintenance, "shall unless otherwise determined by a vote of the members be distributed by the cooperative to its members as patronage refunds". And in Section 12-1062 of the Act it is stated that upon dissolution, after providing for the payment of the debts, obliga-

tions and liabilities of the cooperative, the assets shall be distributed among its members.

Precisely on point is *Consolidated Electric Cooperative v. Panhandle E. Pipeline Co.*, 8 Cir., 189 F. (2d) 777, in which the court held that in view of the provisions of the statute of Missouri, which is similar to the South Carolina Rural Electric Cooperative Act, a rural electric cooperative cannot be deemed to be a charitable corporation. That a rural electric cooperative is not a charitable corporation is convincingly treated in an article entitled "The Liability in Tort of Cooperative Power Companies", 14 Mississippi Law Journal, page 190.

Also on point is *Richardson v. Harmon*, 222 U. S. 96, wherein this Court held that the word "liabilities" includes torts as well as contracts, and in this connection it should be noted that under the provisions of the South Carolina statute providing for the incorporation of rural electric cooperatives, such corporations are required to "pay, satisfy and discharge its debts, obligations and liabilities". In *Bookhart v. Central Electric Power Coop., Inc.*, 219 S. C. 414, the South Carolina Supreme Court held that cooperatives are public utility corporations, rather than charitable organizations. And it is too clear for argument that under South Carolina law public utilities are liable for their torts. *Hill v. Carolina Power & Light Co.*, 24 S. C. 83.

The contention of petitioner that rural electric cooperatives should be exempt from tort liability because they serve a public need and can obtain loans from the federal government is clearly without merit. *Keifer & Keifer v. Reconstruction Finance Corporation*, 306 U. S. 381; *Prato v. Home Owners Loan Corporation*, 106 F. (2d) 128.

Obviously, a rural electric cooperative "is created by a binding together of persons for their common advantage or advancement, financial or otherwise, and is organized

for the mutual benefit of its members, whereas a charitable organization is organized for some benevolent purpose for the benefit of the public or an indefinite class thereof." *Michael v. St. Paul Mercury Indemnity Co.*, 92 Fed. Supp. 140; *Lightly v. Carbon County Agr. Ass'n*, 31 Fed. Supp. 809; *First Wisconsin National Bank of Milwaukee et al. v. Wisconsin*, 119 F. (2d) 999; *Schuster v. Ohio Farmers Coop. Milk Ass'n*, 61 F. (2d) 337.

Moreover, the modern day tendency based upon our social and economic changes since the doctrine of exempting charitable corporations from tort liability was originated is to limit rather than extend the doctrine. *Langhein v. Denison Fire Dept. Swimming Pool Ass'n*, 21 N. W. (2d) 295; *Caughman v. Columbia Y. M. C. A.*, 212 S. C. 337.

3. Legislative exemption from taxation granted to rural electric cooperatives in South Carolina does not indicate legislative intent to treat such corporations as charitable organizations.

The contention by petitioner that because rural electric cooperatives are granted tax exemptions by the South Carolina Legislature it can qualify as a charitable organization is manifestly untenable. It is firmly embedded in the law of South Carolina that privately owned public utilities may be exempted by the legislature from payment of taxes, not because they are charitable organizations, but in consonance with the provisions of Article X, Section 1 of the South Carolina Constitution such exemptions may be granted to induce the establishment or operation of such industries within the borders of the state for the municipal or public purpose of improving the living conditions and incomes of the people of the state. *Duke Power Co. v. Bell*, 156 S. C. 299; *Byrd v. Lawrimore, County Treasurer*, 212 S. C. 281.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

HENRY HAMMER,

HENRY H. EDENS,
1219½ Main St.,
Columbia, S. C.

Attorneys for Respondent.